

SHERILYN BURNETT YOUNG
Attorney at Law

RATH, YOUNG AND PIGNATELLI

Professional Association

ONE CAPITAL PLAZA · P.O. BOX 1500 · CONCORD, NEW HAMPSHIRE 03302-1500
TELEPHONE (603) 226-2600 · FACSIMILE (603) 226-2700

March 17, 2003

VIA HAND DELIVERY

Michael P. Sclafani, Appeals Clerk
New Hampshire Water Council
c/o New Hampshire Department of Environmental Services
6 Hazen Drive
P.O. Box 95
Concord, New Hampshire 03302-0095

RECEIVED

MAR 17 2003

**Re: Appeal of Randall and Caryl Parker
Docket No. 02-14 WC**

Dear Mr. Sclafani:

Enclosed for filing please find the Appearance of Attorney C. Christine Fillmore and me in the above-referenced matter, along with a Motion for Reconsideration.

Although we are filing this Motion with the Council, we and our clients are actively engaged in productive discussions with the Department of Environmental Services to settle this matter. Should we reach a settlement, which we have every expectation will be the case, we will withdraw this Motion.

Thank you for your assistance with this matter.

Very truly yours,

Sherilyn Burnett Young
Rath, Young and Pignatelli,
Professional Association

Enclosure

cc: Attorney Mark R. Harbaugh, DES Legal Unit
Randall and Caryl Parker

C O U N S E L L O R S A T L A W

NASHUA OFFICE: THE GLASS TOWER · 20 TRAFALGAR SQUARE · NASHUA, NEW HAMPSHIRE 03063 · (603) 889-9952 · FAX (603) 595-7489
www.rathlaw.com

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER COUNCIL

Water Council Docket No. 02-14 WC

In re: Appeal of Randall and Caryl Parker

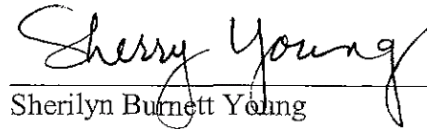
RECEIVED

MAR 17 2003

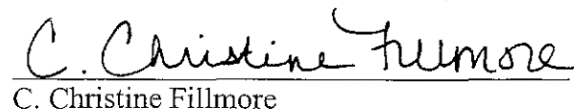
APPEARANCE

Please enter our appearance on behalf of Randall and Caryl Parker in the above-referenced matter.

Respectfully submitted,


Sherilyn Burnett Young

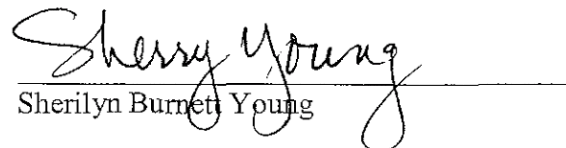
Dated: March 17, 2003


C. Christine Fillmore

Rath, Young and Pignatelli,
Professional Association
One Capital Plaza
P.O. Box 1500
Concord, New Hampshire 03302-1500
603-226-2600

Certificate of Service

I certify that a copy of the foregoing Appearance was sent this 17th day of March, 2003 first class postage prepaid to Attorney Mark R. Harbaugh.


Sherilyn Burnett Young



RATH, YOUNG AND PIGNATELLI
Professional Association

ONE CAPITAL PLAZA · P.O. BOX 1500 · CONCORD, NEW HAMPSHIRE 03302-1500
TELEPHONE (603) 226-2600 · FACSIMILE (603) 226-2700

SHERILYN BURNETT YOUNG
Attorney at Law

sby@rathlaw.com

March 17, 2003

VIA HAND DELIVERY

RECEIVED

MAR 17 2003

New Hampshire Water Council
c/o New Hampshire Department of Environmental Services
6 Hazen Drive
P.O. Box 95
Concord, New Hampshire 03302-0095
Attention: Mr. John Bridges, Chair

Re: Docket No. 02-14 WC
Motion for Reconsideration of Decision & Order dated February 13, 2003

Dear Mr. Chairman and Members:

On behalf of our clients, Randall and Caryl Parker, and pursuant to Env-Wc 203.27, we request reconsideration of the Council's February 13, 2003 Decision & Order dismissing the Parkers' December 4, 2002 Notice of Appeal of Administrative Order No. WD-02-24 (the "Notice of Appeal"). Enclosed please find our appearance in this matter.

We submit this Motion on the Parkers' behalf to present their request for relief and to explain to the Council the circumstances surrounding the filing of the Notice of Appeal. The Parkers respectfully ask for reconsideration of the Council's vote to dismiss the Notice of Appeal because it was not timely filed.

Pursuant to Env-Wc 203.29(c)(3), we present the following information in support of our request for reconsideration of the dismissal.

In response to the Administrative Order issued on October 4, 2002, Randall Parker filed a notice of appeal that was received by the Council on October 31, 2002. This submission was filed within the thirty day time period specified in the Administrative Order and the Council's rules. By letter dated October 31, 2002, Michael Sclafani, Appeals Clerk, noted deficiencies in the appeal and informed the Parkers that a corrected submission could be timely filed within thirty days of the date of that letter.

Shortly after October 31, 2002, our office was retained as legal counsel to assist the Parkers in preparing a corrected Notice of Appeal. The Parkers had not retained us to appear

C O U N S E L L O R S A T L A W

NASHUA OFFICE: THE GLASS TOWER · 20 TRAFALGAR SQUARE · NASHUA, NEW HAMPSHIRE 03063 · (603) 889-9952 · FAX (603) 595-7489
www.rathlaw.com

before the Council if the appeal was granted, as that decision had not yet been made. Accordingly, we did not file an appearance on their behalf at that time because the Parkers chose to sign the appeal themselves.

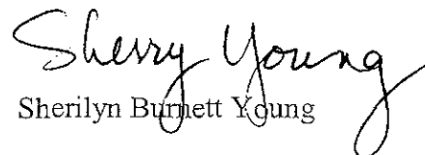
We reviewed the October 31, 2002 letter from Michael Sclafani and understood from that letter that the Notice of Appeal was due within thirty days of that date. The end of this thirty-day period was Saturday, November 30, 2002. According to Env-Wc 202.02(c), when the last day of the period falls on a Saturday, the time period is extended to include the first business day following that Saturday. Therefore, it appears the Notice of Appeal would have been timely had it been filed on Monday, December 2, 2002. However, our office incorrectly calendared the due date for the Notice of Appeal as December 4, 2002 and informed the Parkers that the Notice of Appeal was due on that date. We worked with the Parkers on a deliberate schedule to ensure that the Notice of Appeal would be ready for submission on December 4, and the package was hand-delivered to the Department on that date. Unfortunately, solely because of our inadvertent error, the Parkers filed the Notice of Appeal late and the Council voted to dismiss the Notice of Appeal.

We respectfully request that the Council reconsider and grant the Notice of Appeal despite the late filing. The Council has the authority, pursuant to Env-Wc 203.30, to waive the application of the rules for good cause. If no party objects to the waiver and if the Council determines that good cause for the waiver exists and the interests of the parties to the proceeding would not be prejudiced by the waiver, the Council shall grant the request. Id.

There is good cause for the Council to grant this Motion. The Parkers appealed the Administrative Order because the circumstances leading to it were, in large part, the result of inconsistent advice they received and relied upon from Department personnel. There are no other parties to this matter who object to this Motion or whose interests would be prejudiced if the Council accepted the Notice of Appeal as timely filed. We have spoken with Attorney Mark R. Harbaugh, counsel for the Department, and have been informed that the Department remains neutral on this Motion, leaving it to the discretion of the Council. In this case, it would be unfair to the Parkers to deny them the right of an appeal solely because of an inadvertent calendaring error on our part that resulted in a two-day delay in filing.

Therefore, in light of the above facts and circumstances, I respectfully request on behalf of our clients, Randall and Caryl Parker, that the Council grant this Motion.

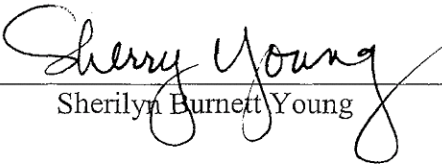
Very truly yours,


Sherilyn Burnett Young

cc: Attorney Mark R. Harbaugh, DES Legal Unit
Randall and Caryl Parker

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion for Rehearing was sent this 17th day of March, 2003 first class mail, postage prepaid, to Attorney Mark R. Harbaugh.



Sherilyn Burnett Young